

APPENDIX G.

**ATTORNEY GENERAL, OFFICE OF FRAUD AND ABUSE
LEGAL REFERENCES**

Elder Abuse Statutes (Criminal)

CODE SECTION	DESCRIPTION	PENALTY
<u>PENAL CODE § 187</u> (Murder)	<ul style="list-style-type: none"> ▪ A human being was killed ▪ The killing was unlawful ▪ The killing was done with malice aforethought or occurred during the commission of a felony inherently dangerous to human life 	<ul style="list-style-type: none"> ▪ Death ▪ Life Without Possibility of Parole ▪ 25 Years to Life
<u>PENAL CODE § 261</u> (Rape)	<p>Act of sexual intercourse (with person not spouse) under any of the following circumstances:</p> <ul style="list-style-type: none"> ▪ Person is incapable, because of mental disorder or developmental or physical disability, of giving legal consent and this is known or reasonably should be known to person committing act ▪ Accomplished against person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury ▪ Person prevented from resisting by intoxicating or anesthetic substance ▪ Person unconscious of nature of the act and this is known to accused 	<ul style="list-style-type: none"> ▪ State prison 3, 6 or 8 Years
<u>PENAL CODE § 288(a); (b)(2);(c)(2)</u> (Lewd or Lascivious Acts)	<ul style="list-style-type: none"> ▪ A person willfully and lewdly commits any lewd or lascivious act, with intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person. ▪ Person is a caretaker and commits act upon dependent adult by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim ▪ Person is a caretaker and commits act upon dependent adult is guilty of a public offense 	<ul style="list-style-type: none"> ▪ Felony state prison 3, 6 or 8 years and \$10,000 fine; State prison 1, 2 or 3 years or 1 year county jail
<u>PENAL CODE § 289</u> (Sexual Penetration)	<ul style="list-style-type: none"> ▪ A person commits an act of sexual penetration ▪ Against victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury ▪ Victim is incapable, because of mental disorder or developmental or physical disability, of giving consent and this is known or reasonably should be known to person committing act 	<ul style="list-style-type: none"> ▪ State prison 3, 6 or 8 years

<p><u>PENAL CODE § 368(b)(1)(2)(3)</u> (Causes or permits infliction of physical pain or mental suffering on elder or dependent adult under circumstances or conditions likely to produce great bodily harm or death)</p>	<ul style="list-style-type: none"> ▪ A person, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits an elder or dependent adult to suffer With knowledge that he or she is an elder or dependent adult ▪ Unjustifiable physical pain or mental suffering 	<ul style="list-style-type: none"> ▪ One year county jail and \$6,000 fine or state prison two, three, or four years ▪ If victim suffers great bodily injury then additional state prison: ▪ 3 years if victim under 70 years ▪ 5 years if victim 70 years or older ▪ If defendant causes death of victim then additional state prison: ▪ 5 years if victim under 70 years ▪ 7 years if victim 70 years or older
<p><u>PENAL CODE § 368(c)</u> (Causes or permits infliction of physical pain or mental suffering on elder or dependent adult under circumstances or conditions not likely to produce great bodily harm or death)</p>	<ul style="list-style-type: none"> ▪ A person, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits an elder or dependent adult to suffer With knowledge that he or she is an elder or dependent adult ▪ Unjustifiable physical pain or mental suffering 	<ul style="list-style-type: none"> ▪ Misdemeanor
<p><u>PENAL CODE § 368(d)</u> (Violates provision of law proscribing theft or embezzlement not a caretaker)</p>	<ul style="list-style-type: none"> ▪ A person, not a caretaker, violates provision of law proscribing theft or embezzlement with respect to property of an elder or dependent adult ▪ With knowledge that he or she is an elder or dependent adult 	<ul style="list-style-type: none"> ▪ When value of property taken exceeds \$400: ▪ Misdemeanor or felony: One year county jail and \$1,000 fine ▪ When value of property taken does not exceed \$400: ▪ One year county jail and \$1,000 fine
<p><u>PENAL CODE § 368(e)</u> (Violates provision of law proscribing theft or embezzlement caretaker)</p>	<ul style="list-style-type: none"> ▪ A caretaker violates provision of law proscribing theft or embezzlement with respect to property of an elder or dependent adult 	<ul style="list-style-type: none"> ▪ When value of property taken exceeds \$400: ▪ Misdemeanor or felony: One year county jail and \$1,000 fine ▪ When value of property taken does not exceed \$400: ▪ One year county jail and \$1,000 fine

<p><u>PENAL CODE § 422</u> (Elements of Offense Willfully threatens to commit a crime which will result in death or great bodily injury)</p>	<ul style="list-style-type: none"> ▪ A person willfully threatens to commit a crime which ▪ Will result in death or great bodily injury to another ▪ With specific intent that the statement ... is to be taken as a threat ▪ Causes person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety 	<ul style="list-style-type: none"> ▪ County jail not to exceed one year or state prison
<p><u>HEALTH & SAFETY CODE § 1290</u> (Violations, Penalties Relating to Operation or Maintenance of LongTerm Healthcare Facilities)</p>	<ul style="list-style-type: none"> ▪ Willfully or repeatedly violating chapter or rule or regulation adopted under chapter relating to operation or maintenance of longterm health care facility 	<ul style="list-style-type: none"> ▪ Misdemeanor \$2,500 fine and 180 days county jail
<p><u>WELFARE & INSTITUTIONS CODE § 15630</u> (Mandated Reporters of Abuse)</p>	<ul style="list-style-type: none"> ▪ Defines mandated reporters ▪ Known or suspected abuse of elder or dependent adult: <ul style="list-style-type: none"> ▸ Physical ▸ Abandonment ▸ Isolation ▸ Financial ▸ Neglect ▸ Reporting requirements 	<ul style="list-style-type: none"> ▪ Failure to report misdemeanor: ▪ Six months county jail and \$1,000 fine Failure to report felony where abuse results in death or great bodily injury: ▪ One year county jail and \$5,000 fine

Elder Abuse Statutes (Civil)

CODE SECTION	DESCRIPTION	PENALTY
BUSINESS & PROFESSIONS CODE §17200 et seq. (Unfair Business Practice) and §17500 et seq. (Unfair Business Practice; Deceptive Advertising)	<ul style="list-style-type: none"> Any unlawful, unfair or fraudulent business act or practice 	<ul style="list-style-type: none"> Injunction; civil penalty up to \$2,500 per violation
GOVERNMENT CODE §12650 et seq. (False Claims)	<ul style="list-style-type: none"> Knowingly presents or causes to be presented a false claim to the state for money, property or services 	<ul style="list-style-type: none"> Civil penalty of treble damages and up to \$10,000 for each false claim

Elder Abuse Statutes (Civil Private Actions)

CODE SECTION	DESCRIPTION	PENALTY
BUSINESS & PROFESSIONS CODE § 17200 et seq. and § 17500 et seq. (Unfair Business Practice; Deceptive Advertising)	<ul style="list-style-type: none"> Any unlawful, unfair or fraudulent business act or practice; deceptive, false or misleading advertising 	<ul style="list-style-type: none"> Restitution; injunctive relief (damages and civil penalties not available to private litigants)
CIVIL CODE § 3345 (Treble Fines, Penalties, or Remedies)	<ul style="list-style-type: none"> Treble fines, penalties, or remedies allowed in actions brought on behalf of senior citizens or disabled persons which involve unfair or deceptive acts or practices or unfair methods of competition 	<ul style="list-style-type: none"> Treble fines, penalties, or remedies
GOVERNMENT CODE § 12650 et seq. (False Claims)	<ul style="list-style-type: none"> Knowingly presents or causes to be presented a false claim to the state for money, property or services; Govt. Code § 12652(c)(1) provides authority for private person to bring action on behalf of state 	<ul style="list-style-type: none"> Civil penalty of treble damages and up to \$10,000 for each false claim
WELFARE & INSTITUTIONS CODE § 15600 et seq. (Elder Abuse and Dependent Adult Civil Protection Act)	<ul style="list-style-type: none"> If clear and convincing evidence that a defendant is liable for abuse or neglect of an elder or dependent adult, and defendant has been guilty of recklessness, oppression, fraud, or malice, the elder or dependent adult is entitled to certain enhanced remedies 	<ul style="list-style-type: none"> Punitive damages; reasonable attorney's fees and costs; claim for general damages for pain and suffering survives death of victim